

Tape 37

Side A, 1/2 - 5/8

REMINDER/MEMO

cc: General Counsel

MEMORANDUM FOR: Legislative Counsel

FROM: D C I

SUBJECT:

Do you think I should go up and see Dee Huddleston and just have a quiet chat about the state of the charters, particularly before we have a wrap-up meeting on the charters?

ST

PO MAY 79
HITZ READ AND SAID "YES." I RELAYED THIS
TO DCI WHO SAID "SET IT UP." I TOLD HITZ
TO SET UP AN APPOINTMENT. HE SAID "OKAY."



Guarding against 'graymail'

Justice Department decisions to drop perjury charges against two International Telephone and Telegraph officials - and strong hints that the conspiracy charges against former FBI director L. Patrick Gray may also be dropped - raise serious issues about the possibilities for abuse in criminal cases involving national security issues. The problem for the government in such instances is how to prosecute in open court defendants who claim their defense is tied to secret intelligence information, which if brought out in a public trial would pose threats to national security.

A very serious concern in such cases is that accused wrongdoers may be raising national security merely as a form of so-called "graymail" to coerce the government to drop its case against them. The ITT is the first such case in recent years in which the government has dropped charges after obtaining an indictment, although there have been numerous instances where defendants appeared to have held up the national security threat to dissuade prosecutors from pressing charges. The Justice Department's decision to allow former CIA director Richard Helms to plead guilty to a misdemeanor was one instance that caused raised eyebrows. Justice Department officials cited national security as one reason they chose not to bring the former CIA chief to trial on more serious charges.

No decision has been made to drop the Gray case. The former FBI director is charged with

conspiring to violate the civil rights of members of the radical Weather Underground by approving illegal break-ins and mail openings in the early 1970s. His case has been severed from those of his two former lieutenants, however, to provide more time to consider national security problems. Gray's lawyers are seeking highly classified documents, which the government has resisted making available.

In such cases the government occasionally has sought from the presiding judge an unusual protective order that would require the defense to disclose in closed session what secret material it intends to introduce. This is done to give the judge a chance to rule on the relevance and admissibility of such evidence in camera, with press and public excluded. However, in the ITT case the presiding judge refused the government request, and an appeals court declined to intervene before the trial was completed. Questions were raised about the government's refusal to shed light on the types of secrets being protected. There was speculation that the sensitive information might be simply embarrassing rather than actually vital to security.

Legislative proposals that would expressly permit the type of protective screening the Justice Department sought in the ITT case ought to be studied closely. It would seem that some proper mechanism could be devised for an impartial and judicious screening of classified documents when national security is at issue.